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4 National City CA 91950
5 Phone 619-581-7844

FILED**08 JUL 10 PM 4:35**CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: *EQ*

DEPUTY

6 Plaintiffs Rosario Tina, Jesus G. Tina
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11 **THE UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
13

14 ROSARIO TINA ; JESUS G. TINA
15 Plaintiff,

16 vs.

17 COUNTRYWIDE HOME LOANS, INC.;
18 AMERICA'S WHOLESALE LENDER;
19 RECONTRUST COMPANY

20 Defendants,
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CASE '08 CV 1233 H AJB

PLAINTIFFS' EMERGENCY
' EX PARTE APPLICATION FOR
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING
ORDER TO STAY PENDING
FORECLOSURE SALE SET FOR
FRIDAY JULY 11, 2008;
MEMORANDUM OF POINTS AND
AUTHORITIES. DECLARATION OF
ROSARIO TINA; PROPOSED ORDER.

NO HEARING DATE:

30 EX PARTE APPLICATION

31 Plaintiffs Rosario Tina and Jesus G. Tina hereby make this ex parte application to
32 move this Honorable Court Ex Parte for an Emergency Temporary Restraining Order

CP

1 enjoining and restraining the named defendants from foreclosure sale of the subject Property
2 at 1720 East 4th Street, National City, California 91850 set for Friday July 11, 2008.
3

4 Plaintiffs request an ex parte stay order from this Court to stay wrongful foreclosure
5 until further order of this court until a declaratory judgment can be obtained that would
6 declare the trustee rights invalid or in the alternative, to hear an order to show cause.

7 Plaintiffs will suffer irreparable injury if the eviction is not enjoined until plaintiffs
8 have a fair and adequate opportunity to have their claims heard. Plaintiffs have lawful right to
9 their property and it is clear that a fraud was perpetrated on them based on the loan documents
10 dated August 17, 2006.
11

12 Simply put, the defendants have no standing to proceed against plaintiffs in
13 foreclosure by their conduct in failure to provide validation and verification of the alleged
14 debt documents and fraud and statutory violations.
15

16 In addition, Plaintiffs may well have the right to compensation from defendants for
17 their fraudulent conduct and commercial injury. Further, it is likely that plaintiffs will prevail
18 on their claims because they are Pilipino elderly citizens who were taken advantage of by
19 predatory lender practices due to their age and language barrier limitations. [Jesus G. Tina is
20 83 years old and Rosario Tina is 67]
21

22 In an abundance of caution and based upon legal and equitable considerations, this
23 Court should enter a Preliminary Temporary Restraining Order to enjoin the foreclosure and
24 allow Plaintiffs and Defendants to set forth their respective claims.

25 This motion is filed on an emergency basis in that if the foreclosure set for Friday, July
26 11, 2008 goes forward, then Plaintiffs will suffer extreme hardship and lose the subject
27 property, possession of the property and all of their equity in the property even if their claims
28 are meritorious. The nonmoving party will not be irreparably injured by the issuance of a
29 stay. Plaintiffs request that the Court grant a Preliminary Temporary Restraining Order
30 without bond, as Plaintiffs are unable to provide a bond of any kind or type without extreme
31 hardship.
32

1 When the potential harm to Plaintiffs are balanced against the rights of the defendants,
2 greater injury will be inflicted upon the elderly plaintiffs in the loss of their property than
3 upon defendants.
4

5 The public interest will be served by allowing Plaintiffs to remain in their property,
6 preventing their from health threatening worries.

7 Plaintiffs have attempted to give notice of these proceedings and this request for a
8 temporary restraining Order as evidenced by the certificate of service which accompanies this
9 request.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **1.**

13 **STANDARD FOR INJUNCTIVE RELIEF**

14 It is well settled that the standard for issuing a temporary restraining order is identical
15 to the standard for issuing a preliminary injunction which is applicable to this request for a
16 stay of the foreclosure sale. The propriety of a stay like a preliminary injunctive relief
17 requires consideration of three factors: 1) the likelihood of the defendant's success on the
18 merits; 2) the threat of irreparable harm to the defendant if the injunctive stay is not imposed;
19 and 3) the relative balance of potential hardships to the parties.
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23 These three factors are incorporated into a test under which the moving party must
24 meet its burden by demonstrating either: 1) a combination of probable success on the merits
25 and the possibility of irreparable injury, or 2) that serious questions are raised and the balance
26 of hardships tips sharply in her favor.
27

28 **TRO Initial Requirements.** The initial requirement for the issuance of a TRO is that
29 the moving party must demonstrate what the courts have always labeled the fundamental
30 requirements that he is suffering from irreparable injury and the inadequacy of legal remedy.
31 See Weinberger v Romero-Barcedo 456 US 305, 312, 102 S.Ct 1978 (1982).
32

1 Here, the item in question is the Plaintiff's real property. This is one of those items
2 which by definition is configured unique and something for which no amount of monetary
3 damages will compensate. In short, by definition Plaintiffs will suffer irreparable harm in the
4 loss of their property and that loss will be something which they cannot be compensated for
5 the essence of the requirements in equity [as well as cause them life threatening health issues
6 at their ages].
7

8
9 **Preliminary Injunction.** In determining whether to issue a stay of execution like a
10 preliminary injunction, the trial court considers two factors: (1) the likelihood that the
11 defendant will prevail on the merits of its case at trial, and (2) the interim harm that the
12 defendant is likely to sustain if the stay/injunction is denied as compared to the harm that the
13 plaintiff is likely to suffer if the court grants a stay/preliminary injunction. 14859 Moorpark
14 Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402; Pillsbury, Madison &
15 Sutro v. Schectman (1997) 55 Cal.App.4th 1279, 1283 [Rev. Den. 10/1/97]; Davenport v.
16 Blue Cross of California (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital
17 (1994) 25 Cal.App.4th 628, 636.
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22 **Criteria for Granting Relief.** Traditionally the criteria for granting relief is (1) a
23 strong likelihood of success on the merits, (2) the possibility of irreparable injury to moving
24 party if the requested relief is not granted, (3) a balance of hardships favoring the moving
25 party, and (4) the advancement of the public interest. These principles are followed in state
26 and federal cases. Alternatively, the federal courts have held that relief may be granted on a
27 lesser showing of probable success. "If the harm that may occur to the ... is sufficiently
28 serious, it is only necessary that there be a fair chance of success on the merits." [Emphasis
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1 added] William Inglis & Sons Baking Co. v. ITT Continental Baking Co. 526 F.2d 86, 88 (9th
2 Cir. 1975).

3
4 The burden may be met by demonstrating either "a combination of probable success
5 on the merits and the possibility of irreparable injury or that serious questions are raised and
6 the balance of hardships tips sharply in its favor." Wright v. Rushen, 642 F.2d 1129, 1132
7 (9thCir. 1981); see Sonoran 408 F. 3d at 1120 (explaining that "these two formulations
8 represent two points on a sliding scale in which the required degree of irreparable harm
9 increases as the probability of success decreases. They are ... outer reaches of a single
10 continuum." (citations omitted)); Johnson v. Cal. State Bd. Of Accountancy, 72 F.3d at 1430;
11 Sports Form, Inc. v. United Press Int'l. Inc., 686 F.2d 751, 752 (9th Cir. 1982); Benda v.
12 Grand Lodge of the Int'l Assoc. of Machinists & Aerospace Workers, 584 F.2d at 314.
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14

15
16 Moreover, the stay relief requested herein can be granted ex parte to serve the
17 underlying purpose of preserving the status quo and preventing irreparable harm. This relief
18 is particularly appropriate when it is the sole method of preserving a state of affairs in which
19 the court can provide effective final relief.
20
21

22 The purpose of a stay pending appeal like the preliminary injunction is to preserve the
23 status quo pending final resolution upon a trial or completion of the appeal. See Scaringe v.
24 J.C.C. Enterprises, Inc. (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp. (1992) 11
25 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn. (1992) 7 Cal.App.4th 618,
26 623.
27
28

29 The status quo has been defined to mean the last actual peaceable, uncontested status
30 which preceded the pending controversy. Voorhies v. Greene (1983) 139 Cal.App.3d 989,
31
32

1 995, quoting United Railroads v. Superior Court (1916) 172 Cal. 80, 87. 14859 Moorpark
2 Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396. 1402.

3
4 The determination whether to grant a stay/preliminary injunction generally rests in the
5 sound discretion of the trial court. Abrams v. St. Johns Hospital (1994) 25 Cal.App.4th 628,
6 636; 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396. 1402.
7 Normally, the trial court must determine whether defendants would suffer greater harm from
8 issuance of the preliminary injunction /stay than the plaintiffs would suffer from its refusal.
9
10 Thornton v. Carlson (1992) 4 Cal.App.4th 1249, 1255. To obtain a preliminary injunction,
11 the moving party must establish the opposing party should be restrained from the challenged
12 activity pending trial or in the instant pending appeal. See IT Corp. v. County of Imperial
13 (1983) 35 Cal.3d 63. Bank of Stockton v. Church of Soldiers (1996) 44 Cal.App.4th 1623,
14 1625. The public needs to know and has a right to be warned about the lenders' business
15 practices and activities including the lack of accounting for tender and demand for double
16 payment and failure to correct any known related contractual, disclosure and fiduciary issues.
17
18 The facts herein raise a dispute of title and declaratory relief is needed.
19
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22 **Scope of Injunctive Relief.** The general rule (apart from constitutional
23 considerations), is that injunctive relief should be no more burdensome to the opposing party
24 than necessary to provide complete relief to the moving party. Madsen v. Women's Health
25 Center, Inc., 512 U.S. 753 at pp. 765; San Diego Unified Port Dist. v. U.S. Citizens Patrol
26 (1998) 63 Cal.App.4th 964, 971.
27
28

29 **Posted Security.** A stay like a preliminary injunction ordinarily cannot take effect
30 unless and until the party applying for it provides an undertaking to the effect that the
31 applicant will pay to the party enjoined such damages as the party may sustain by reason of
32

1 the injunction, if the court finally decides that the applicant was not entitled to the injunction
2 [see § 529(a)]. City of South San Francisco v. Cypress Lawn Cemetery Assn. (1992) 11
3 Cal.App.4th 916, 920. Given the current real estate market a temporary restraining order
4 will do defendants virtually no damage
5

6
7 **Interim Harm.** In evaluating interim harm, the trial court compares the injury to the
8 requesting party in the absence of an injunction (stay in this matter) to the injury the opposing
9 party is likely to suffer if an injunction is issued. Shoemaker v. County of Los Angeles (1995)
10 37 Cal.App.4th 618, 633. The factor of interim harm involves consideration of such things as
11 the inadequacy of other remedies, the degree of irreparable harm, and the necessity of
12 preserving the status quo. Abrams v. St. John's Hospital & Health Center (1994) 25
13 Cal.App.4th 628, 636; 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63
14 Cal.App.4th 1396. 1402.
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16

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18 2.

19 **LEGAL ARGUMENT**

20 **PRELIMINARY CONSIDERATIONS**

21
22 **Relief Sought.** The general rule is that a Temporary Restraining Order ("TRO") or a
23 preliminary injunction is for the purpose of preserving the status quo, that is the condition at
24 the time of filing, until there can be an adjudication on the merits. As what appears to be the
25 essential case on the issue, but Supreme Court has held "the sole purpose [of the TRO] is to
26 preserve the status quo pending hearing on the moving party's application for a preliminary
27 injunction". Granny Goose Foods v. Brotherhood of Teamsters et al 415 US 423, 439, 94S.Ct.
28 113 (1974). Thus the only relief sought here is the issuance of the TRO.
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NOTICE Unlike a request for a TRO, an application or motion for a Preliminary Injunction requires notice to the opposing party or parties. The rules are clear that a TRO can issue *ex parte* that is without notice. As can be seen from the appended declaration and certificate, notice is given by the moving party here who served notice of an emergency hearing or at least attempted to do so at the same time as the complaint was served.

JURISDICTION

SUBJECT MATTER JURISDICTION. The first step in obtaining injunctive relief of any sort is that the moving party must demonstrate that the court has subject matter jurisdiction that must be affirmatively pled.

The complaint which is simultaneously filed states the Federal Court jurisdiction is predicated upon federal questions including violations of various federal codes thus giving this court jurisdiction. Plaintiff's complaint also alleges violation of the Fair Debt Collection Practices Act both in its federal and state forms. Thus, for purposes of a TRO sufficient jurisdiction has been pled.

PERSONAL JURISDICTION. A second test concerning issuance of a TRO is a demonstration of personal jurisdiction over the parties. The simultaneously filed complaint clearly indicates the personal jurisdiction exists over each of the defendants.

STANDING. The requirement of standing prevents someone from bringing action based upon someone else's rights. One must show direct and concrete or eminent injury to oneself. *Lujan v. Defenders of Wildlife* 504 US 555, 560, 112 S.Ct 2130 (1992). Plaintiff sclearly demonstrates that irreparable harm threatens their property.

EQUITABLE JURISDICTION Not only must the other jurisdictional requirements be met but the court must have equitable jurisdiction. While courts of equity (Chancery) were

once separate, the joinder of both functions unless the Congress has specifically excluded such equitable jurisdiction is implied. "Absent the clearest command to the contrary from Congress, Federal Courts retain equitable power to issue injunctions over any suit over which they have jurisdiction." CalafanovYamasaki 442 US 682, 705, 99 S.Ct 2545 (1979). See also US v Oakland Cannabis Buyers Coop 532 US. 483, 495, 112 S.Ct 1711 (2001).

Here, there is no question that this court has jurisdiction to grant the relief requested. The only issue is whether the court in its discretion deems the relief appropriate

3.

DISCUSSION

A. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

A preliminary injunction/stay is appropriate where a plaintiff is likely to prevail at trial or appeal and failure to provide interim relief will cause irreparable harm. Barajas v. City of Anaheim (1993) 15 Cal.App.4th 1808, 1813.

Because the standards for obtaining injunctive relief or stay of foreclosure sale and prevailing against statutory and constitutional rights are distinct, the court's entry of a stay against defendants' foreclosure sale activities and refusing to allow the foreclosure sale pending determination of the issues presented in the simultaneously filed complaint must be granted. This court must stay any enforcement of the wrongful foreclosure which is proceeding on wrongful hearsay and false evidence to prevent irreparable harm to plaintiffs and maintain the status quo.

LIKELIHOOD OF SUCCESS. The test for issuance of the relief sought here is difficult to evaluate, because from the outset the likelihood of success is viewed from the perspective of the time at which the request is filed. Certainty is not required, thus, plaintiffs

1 are not required to show positively that she will prevail on the merits. A reasonable
2 probability is sufficient See *Glider v PGA Tour Inc.* 936 F. 2nd 417, 422 (9 Cir 1991).

3
4 Various courts have used various tests for this rule that the Ninth Circuit however has
5 set forth a test which is formulated in the alternative. That is a Plaintiff may meet his burden
6 by showing "either a combination of probable success on the merits and the possibility of
7 irreparable injury; or serious questions as to these matters and the balance of hardships tips
8 sharply in the Plaintiffs favor" *Department of Parks & Rec for the State of California v.*
9 *Bazaar Del Mundo Inc.* 448 F. 3rd 1118, 1123 (9th Cir 2006).

10
11 The court continued to note that the two "formulations represent two points on a
12 sliding scale in which the required degree of irreparable harm increases as the probability of
13 success decreases" id at pg 1123-1124. The Circuit Court, has also noted that where there are
14 "serious questions" that is questions that involve a fair chance of success on the merits that
15 cannot be resolved by the one way or the other at the hearing on the injunction "and they as to
16 which the court perceives the need to preserve the status quo lest one side prevent resolution
17 of the question or execution of any judgment by altering the status quo" *Republic of the*
18 *Philippines v Marcos* 862 F. 2nd 1355, 1362 (9 Cir 1988). [In this case, the issue was whether
19 the Defendant a former President of the Philippines would make it impossible for the
20 Republic to recover its treasury.]

21
22 Here, the Plaintiffs demonstrated the existence of that reasonable likelihood of
23 success with regard to very serious questions. Like the case decided by Judge Whelan a little
24 over a month ago, *Lyndon v. Countrywide Home Loans* (Docket number 08 - CV-0837) May
25 13, 2008 Plaintiffs here both filed suit and sought relief after all other remedies failed to
26 prevent the commercial occurrence of the "sale" before the foreclosure. Plaintiffs

1 actively attempted to obtain information so as to determine whether the sale was lawful. These
2 efforts, clearly demonstrate violations of both the Federal and State Fair Debt Collection
3 Practices Act. Plaintiffs' complaint is sufficient and demonstrates a sufficient likelihood of
4 success. Plaintiff attempted to resolve this matter early when given the extraordinarily
5 serious loss of plaintiffs' property which will take place if the TRO does not issue, the court
6 must enter the stay order as requested. Public policy strongly supports protection of the
7 elderly consumers who are victims of predatory lenders.
8

9
10 For all of these reasons it is respectfully requested the Plaintiffs' request be granted and
11 that a temporary restraining order issue restraining all Defendants from taking any action
12 negatively affecting Plaintiffs' rights to the property.
13
14

15 **B. PLAINTIFFS HAVE AN INADEQUATE REMEDY AT LAW.**

16 **Adequacy of Remedy at Law.** A party seeking injunctive relief must show the
17 absence of an adequate remedy at law. Department of Fish & Game v. Anderson-Cottonwood
18 Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565. The idea "inadequacy of the legal remedy"
19 or "inadequacy of damages" dates from the time of the early courts of chancery, the idea
20 being that an injunction is an unusual or extraordinary equitable remedy which will not be
21 granted if the remedy at law (usually damages) will adequately compensate the injured
22 plaintiff. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8
23 Cal.App.4th 1554, 1565. This also applies to a stay of foreclosure and damages to plaintiff's
24 credibility and credit standing and the emergency pending the loss of her home.
25
26

27 California statutes cover this inadequacy in terms of "when pecuniary compensation
28 would not afford adequate relief" [CCP § 526(a)(4); CC § 3422(1)], and "where it would be
29 extremely difficult to ascertain the amount of compensation which would afford adequate
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relief" [CCP § 526(a)(5); CC § 3422(2)]. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565. Plaintiff has no other venue to get the message to the members of the public most likely to be harmed by wrongful lender tactics and failure to credit payments and failing to accommodate the language and age barriers of the consumer. The case facts support the contention that plaintiffs are likely to prevail on the merits. The law provides an inadequate remedy for the plaintiffs. Any one of these is sufficient for the court to grant the emergency ex parte motion, all of them overwhelm and urge that this request for a stay of eviction must be granted.

C. COMPELLING PUBLIC POLICY CONSIDERATIONS SUPPORT AN INTERPRETATION THAT DEFENDS THE PUBLIC'S RIGHT TO CONTRACTUAL TENDER FOR CONTRACTUAL OBLIGATIONS AND PROPER ACCOUNTING.

Irreparable injury. "The term 'irreparable injury' means that species of damages, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other." Wind v. Herbert (1960) 186 Cal.App.2d 276. The injunctive power of the court is warranted against a wrong which a trial judge deems insufferable because it constitutes an "overbearing assumption by one person of superiority and domination over the rights and property of others." Fretz v. Burke, 247 Cal.App.2d 741.

The balance of hardships clearly favors plaintiffs who stand to lose their property before the Court can fully decide the issues. Any harm to the lenders can be recompensated with a damage award. Plaintiffs stand to lose their home, their creditability, and their credit standing. This harm is irreparable; money damages cannot compensate plaintiffs for the loss of their unique property and her loss of personal reputation. Moreover, the public interests

1 weighs in favor of allowing plaintiffs to maintain their home, particularly in light of the
2 serious questions of the propriety of the predatory lender tactics. The public policy should not
3 reward lenders seeking obscene profits and ignore support of plaintiffs' activities and courage
4 to protest the lenders' injustice.
5

6 **BALANCING** In general, the court is also obligated to balance the competing
7 claims of the parties and the effect on each of them to balance the issuance of injunctive relief
8 as against the harm of not issuing the injunction. In addition, it appears the Judge should give
9 at least some weight to any public interest which might be involved. See *Dogloo v. Doshocil*
10 *Manufacturing Industries* 875 F. Supp. 911, 919 (CD Ca 1995). Generally stated the rule is
11 that there must be a substantial threat of irreparable harm to the Plaintiffs, that injury must
12 outweigh any potential harm to Defendants and there is no substantial risk to public interest.
13 Here, what the Plaintiffs stands to lose is their property, not only just the most important
14 investment any person ever makes but also the place she chose to make a n investment for
15 their life, to build their future, a place which by definition the law has ruled not replaceable by
16 mere money.
17

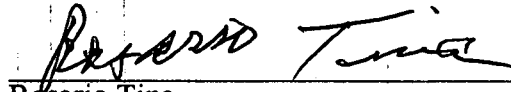
18 As to the Defendants here, issuing a Temporary Restraining Order, particularly given
19 the current real estate market will do them essentially no damage at all. In fact it is
20 extraordinarily common that foreclosure sales are postponed without court intervention,
21 something that the plaintiffs attempted to no avail. Plaintiffs justifiably demand under what
22 right the defendants actually legally held the foreclosure. It is not excessive to restrain the
23 foreclosure where there are fraudulent lender activities until there is actually proof that the
24 Defendants have the right to foreclose on the plaintiffs' property and evict them from
25 possession of their property. This relief must be reviewed by this court to avoid an extremely
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VERIFICATION

I, ROSARIO TINA, am a plaintiff in the above-entitled action. I have read the foregoing emergency Application for Ex Parte Temporary Restraining Order, and the simultaneously filed complaint and know the contents thereof. The facts and allegations contained therein are true and correct of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at National City, California.

Dated: July 10, 2008


Rosario Tina

1 harsh consequence. As to public interest as far as can be seen, there is an important awareness
2 of lender improprieties and predatory activities.
3

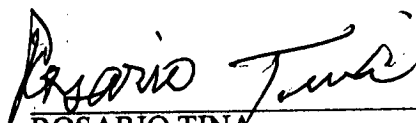
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5 CONCLUSION

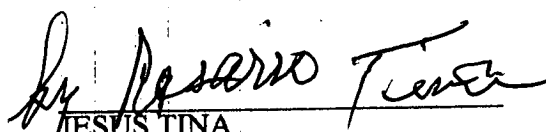
6 WHEREFORE, for the reasons stated herein and in the simultaneously filed
7 complaint, Plaintiffs respectfully pray that this Honorable Court grant to them the following
8 relief:
9

- 10 1. Accept jurisdiction over the parties and the subject matter of this cause;
11 2. Enter a Temporary Restraining Order enjoining and restraining the unlawful
12 foreclosure process until further order of the court;
13 3. Grant the Temporary Restraining Order without bond; and
14 4. Grant such other and further relief as the Court deems equitable, appropriate and
15 just.
16

17
18 Date: July 10, 2008

Respectfully submitted,

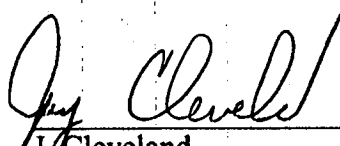
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20 
21 ROSARIO TINA
22 Plaintiff in pro se
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25 JESUS TINA
26 Plaintiff in pro se
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in this 09th day of July 2008 I caused a true and correct copy of the foregoing Motion for Ex Parte Temporary Restraining Order has been furnished by fax to defendants Countrywide Home Loans, Inc, 4500 Park Granado , Calabasas, CA 91302-1613 Recontrust Company, 1757 Tapo Canyon Road, SVW-88, Simi Valley, CA 93063. Phone: FAX 805-955-5351 Ph 800-281-8219 (800) 281-8219, America's Wholesale Lender, 1455 Frazee Road #102, San Diego, CA 92109, Phone: 619-688-5100, Fax 619-688-9258

Dated: July 10, 2008


J. Cleveland



FAXED
7-10-08

1 ROSARIO TINA
2 JESUS G. TINA
3 1220 MANCHESTER STREET
4 NATIONAL CITY, CA 91950
5 Phone: 619-5817844

FILED

08 JUL 10 PM 4:37

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

ECL

10 **THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12
13 ROSARIO TINA; JESUS G TINA

14 Plaintiff,

15 vs.

16 COUNTRYWIDE HOME LOANS, INC.
17 AMERICA'S WHOLESALE LENDER
18 RECONTRUST COMPANY

19 Defendants,
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CASE NO.

08 CV 1233 H AJB

DECLARATION OF
ROSARIO TINA

23 **DECLARATION OF ROSARIO TINA**

24
25 I, Rosario Tina, declare

26 1. I am a plaintiff in the within matter. The facts set forth herein are within my
27 personal knowledge and, if called upon to do so, I could and would competently testify thereto
28 under oath. This declaration is made in support of ex parte application for injunctive stay of
29 unlawful foreclosure, dated for July 11, 2008, of our property at 1720 E 4th Street, National
30 City, CA 91950.
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DECLARATION OF ROSARIO TINA - 1

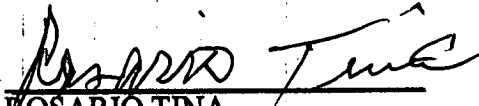
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1 2. I simultaneously have filed a complaint for damages for wrongful foreclosure,
2 declaratory relief, injunctive relief, accounting, deceptive fraud and unfair business trade
3 practices and other statutory violations, and fraudulent conduct of defendants.
4

5 3. In good faith on or about August 15, 2006 we closed a refinance loan with
6 Countrywide Home Loans, Inc after many changes in our documents which we did not
7 understand. In spite of a high FICA score of 700 plus, I was told that we did not qualify for
8 one large loan and would have to make two loans. I asked for a fixed rate but we were given
9 an adjustable rate that keeps climbing. My 83 year old husband and I did not understand the
10 documents but were told to just sign them and read them later. A foreclosure sale is now set
11 on Friday, July 11, 2008. I need an emergency order to stop the foreclosure sale or the
12 property will be lost. I have no a remedy to keep the status quo until the court hears the
13 issues of my complaint.
14

15 4. This ex parte application is being faxed the defendant parties as stated on the
16 attached certificate of service and their office is being advised that any opposition to this ex
17 parte request must be immediately filed with the Court.
18

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct. Executed on 10th day of July, 2008 at National City, California.
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23 ROSARIO TINA
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